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July 26, 2011

**VIA ECF**

The Honorable Roslynn R. Mauskopf  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

**RE: Lowenbein v. United  
11 CV 613 (RRM)**

Dear Judge Mauskopf:

I represent the plaintiff in the above referenced matter. At this afternoon's conference before the Magistrate Judge it was agreed that the plaintiff would make an application for a pre-motion conference in order to file a motion to amend the complaint to add an additional cause of action pursuant to the Telephone Communications Privacy Act.

The plaintiff filed this matter on February 7, 2011. The plaintiff sent the waiver of summons to the defendant on February 17, 2011 which was signed by the defendant on March 1, 2011. The defendant was then entitled to 60 days to respond to the complaint from February 17, 2011. It appears from my email history with Mr. Imeri that where we had some discussions about the matter, when I indicated on March 31 that I intended to file an amended complaint asserting a claim under the TCPA, he went ahead on the same day and filed an answer to the complaint.

Since the filing of the complaint we have had conferences with the Magistrate Judge but have not entered into any formal discovery schedule. We believe that at this early stage of the litigation, there is no prejudice to the defendant, and it appears that caselaw is quite clear and that my experience shows me that Mr. Imeri's failure to consent to my filing an amended complaint is a prominent aberration from the norm.

We request that the if the Court schedules an in person pre-motion conference that it be scheduled Monday through Wednesday in the afternoon or on a Thursday at any time. I would appreciate that it not be scheduled from August 9 through August 16. Thank you for the Court's consideration of the foregoing.

Yours faithfully,

/s/

Adam J. Fishbein

Cc: Jeffrey J. Imeri, Esq.